IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

WP(C).No. 25392 of 2007(W)

PETITIONER:

V.A.DAVID, S/O.ABRAHAM, AGED 62 YEARS,
VADAKKOOD HOUSE, C.S.I.COMPOUND, ALUVA-1.

BY ADV. SMT.DAISY A.PHILIPOSE

RESPONDENT:

M/S.UNION BANK OF INDIA,
ALUVA BRANCH, REPRESENTED BY ITS
BRANCH MANAGER.

BY ADV. SRI.A.S.P.KURUP, SC, UBI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) NO. 25392 OF 2007 W

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Dated this the 11th day of October, 2007

J U D G M E N T

The prayer made in this writ petition is to direct the respondent to return the balance amount after appropriating the amount that is due to it in terms of Ext.P1 judgment.

2. According to the petitioner, Bank had monetary claim against him and had filed OS 42/2000. The suit was decreed and Ext.R1 is the decree and Ext.P1 is the judgment. In terms of the decree of the Civil Court, petitioner's liability was only Rs.1,96,795/-. On the other hand, the Bank had admittedly realised the total amount of Rs.6,15,000/-. It is on this basis that the petitioner contends that the Bank had realised amounts far in excess of the decree and therefore it should be directed to refund the excess amount.

3. The Bank has filed a counter affidavit producing the decree and certain other documents. From the decree it is seen that the suit was filed claiming an amount of Rs.3,36,295/-

together with interest on the principal amount at the rate of 16.5%. Ext.R1 decree was granted by the Civil Court allowing it to realise only Rs.1,96,795/-. The Bank was not satisfied with the decree including the interest as it was only 6%. They were contemplating an appeal and at that stage, the petitioner approached the Bank and requested for an out of court settlement. Ext.R2 is the letter that is submitted by the petitioner, and on agreed terms, petitioner remitted an amount of Rs.5,50,000/- on 2.3.07 and another amount of Rs.65,000/- on 5/3/07. Thus Bank admits of having realised an amount of Rs.6,15,000/-. It is stated that the Bank had agreed for a settlement by realising the principal amount along with 12% interest as against the contract rate of 16.5%. It is submitted by the Bank that the compromise terms were agreed to by the petitioner and it is on that basis settlement was arrived at. Bank also admits that the amount realised was Rs.90,706/- in excess and that under Ext.R3, it has already refunded Rs.68,619/-. The Bank offers to refund the balance amount of Rs.22,087/- anytime the petitioner wants. It is also submitted that after the matter

was settled between the parties, Bank has already returned the title deeds as well.

4. From the above, it is obvious that the issue raised by the writ petitioner is a disputed question of fact. Petitioner contends that under compelling circumstances, he had to pay excess amounts to the Bank, which it was not entitled to receive. Bank contradicts it by contending that it was on mutual agreement that it was all done. This kind of a dispute cannot be resolved in a proceedings under Article 226 of the Constitution of India and the appropriate forum is the civil court.

Without prejudice to that right and leaving open the contentions, the writ petition is dismissed.

ANTONY DOMINIC, JUDGE.

Rp